APPENDIX "A"

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS ON JURISDICTION

Stewart Oil Company, a corporation; Michigan Oil Company, a corporation Stewart Producers, Inc., a corporation; Kenneth Patterson; G. F. Stewart; W. Rolland Stewart; Frank J. Tiernan; and Morris Yarbrove, Plaintiffs.

v.

Sohio Petroleum Company, a corporation,
Defendant and Counterclaimant.

v.

Walter E. Kline, Stella P. Kline, R. E. Hayes, Carl E. Moses, David R. Stewart, W. T. Frederking, A. P. Wagemann, John J. Steiner, Josephine M. Steiner, and Donk Bros. Coal and Coke Company, Counterdefendants.

Civ. A. No. 3821

United States District Court
E. D. Illinois

Aug. 3, 1960

JUERGENS, District Judge.

Plaintiffs filed suit demanding proceeds from the sale of oil produced from lands to which they claim oil and gas rights. The original defendant filed an interpleader action because of disputed claims to the proceeds between the plaintiffs and other parties.

The original defendant has tendered $100,156.04 to the Clerk of this Court, alleging possession but not legal ownership

thereof, and asks the Court to determine the party or parties entitled thereto.

The interpleader action prays the determination of ownership not only as to the funds paid into court but also ownership to proceeds from the sale of oil and gas to be produced from the disputed lands in the future.

Counterclaimants have been brought into the action and have filed claims to the funds presently in the court and funds which may accrue in the future.

The interpleaded funds are proceeds of oil produced and marketed by plaintiffs from land lying outside the Eastern District of Illinois in Bond County, Illinois.

On the eve of trial the counterdefendants, Walter E. Kline, Stella P. Kline, R. E. Hayes, W. T. Frederking, and A. P. Wagemann, filed their motion to dismiss for the following reasons:

1. That the Court lacks jurisdiction of the persons and subject matter in this action because the principal question involved is a local action to try title of land lying outside the territorial limits and jurisdiction of this Court.

2. That there is not proper diversity of citizenship between the parties.

3. That there is an action awaiting trial in the Circuit Court of Bond County, Illinois, which involves substantially identical issues as this case.

[1] An examination of the pleadings discloses that the action awaiting trial in Bond County, Illinois, does not involve the title to the land here in dispute nor the parties in this action. Accordingly, the reason for dismissal set forth in number 3 above is without merit.

(Opinion of the U. S. District Court on Jurisdiction)

The brief of counterdefendants, Walter E. Kline, Stella P. Kline, R. E. Hayes, W. T. Frederking, and A. P. Wagemann, asserts that this Court does in fact have jurisdiction over the interpleader action, thereby apparently waiving the grounds in support of their dismissal as set forth in paragraph numbered 2 above. Notwithstanding this apparent waiver, the Court finds that diversity of citizenship exists.

The assertion that this Court lacks jurisdiction of the subject matter because the principal question involved is a local action to try title to land lying outside the territorial limits and jurisdiction of this Court will next be considered.

[2, 3] Whatever may be the extent of the jurisdiction of the lower federal courts over the subject matter of a suit with respect to persons and property, it is, in the absence of express authority by act of congress, confined to the territorial limits of the district within which the court sits. Accordingly, although a lower federal court may in the exercise of its equity powers, and acting in personam, control the acts of persons over whom it has acquired jurisdiction, outside of its territorial jurisdiction, as for instance by compelling a conveyance of lands in another state by a decree in personam against the party who holds the title, it has no jurisdiction to transfer the title to such lands by a sale and conveyance made through its master or commissioner. 35 C.J.S. Federal Courts § 16, p. 811.

[4] Here there can be no question as to the federal court's jurisdiction in the interpleader action or as to this Court's actual possession of the property with respect to which it is called upon to adjudicate title, namely, the proceeds of the royalty payments deposited in the registry. The Court's jurisdiction is not affected by the circumstance that the funds in the registry possess the legal character of proceeds derived

from the sale of interests in realty or by the fact that title to those funds is to be determined in accordance with the state law. *Hickok* v. *Gulf Oil Corporation*, 6 Cir., 1959, 265 F. 2d 798.

It cannot be successfully disputed that this Court has jurisdiction over the proceeds of the funds deposited in this Court. The only point upon which jurisdiction of this Court may be challenged is premised on the fact that the Court is asked to determine ownership of future funds which may be derived from the sale of oil and gas produced from land lying outside the territorial limits of the district.

It is counterclaimants' assertion that in this action the Court must determine title to lands lying outside the territorial limits of the district and therefore, the action is local and must be brought within the district where the land is located.

[5] Whether a cause of action involving land is local or transitory depends upon the law of the state wherein the land is situated. *Kentucky Coal Lands Co.* v. *Mineral Development Co.*, 6 Cir., 191 F. 899.

Section 7 of Chapter 110, Illinois, Revised Statutes, provides in pertinent parts as follows:

> "§7. Venue— • • •
>
> "(2) Any action to quiet title to real estate, or to partition or recover possession thereof or to foreclose a mortgage or other lien thereon, must be brought in the county in which the real estate or some part of it is situated."

[6] At the start of this action there may have been grave doubt as to whether this Court was the proper venue for this cause. When the defendants entered their unlimited appearance, any questions of venue which may have been raised were waived and consequently are not now open to consideration by the Court.

(Opinion of the U. S. District Court on Jurisdiction)

In *Berans* v. *Murray*, 251 Ill. 603, 96 N.E. 546, 554, the Illinois Supreme Court had before it a question somewhat akin to the question here presented, wherein it was asserted that the lower court lacked jurisdiction to enter a decree construing deeds to land, some of which was located in the State of Indiana. The Court quoted from *Enos* v. *Hunter*, 4 Gilman, Ill. 211, as follows:

> "'Where the relief sought could be effected by acting directly upon the person of the defendant, the court of chancery has never hesitated to entertain the bill where the defendant is found within its jurisdiction, whether the subject matter of the controversy be within its control or not. Of this character are those cases where the courts have compelled specific performances of contracts for the conveyance of or relating to land which is situate beyond its jurisdiction, and in such case the court will compel a conveyance to be executed in such manner and form as may be prescribed by the laws of the country where the land is situate. * * *'."

The court also quoted from *Massie* v. *Watts*, 6 Cranch 148, 3 L. Ed. 181, as follows:

> "'When the defendant is liable, either in consequence of a contract or as trustee or as holder of a legal title acquired by a species of mala fides practiced on the plaintiff, the principles of equity give a court jurisdiction wherever the person may be found; and the circumstance that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest the jurisdiction. * * * In case of fraud, of trust or of contract, the jurisdiction of a court of chancery is sustainable wherever the person is found, although lands not within the jurisdiction may be affected by the decree.'"

The court further stated that the concluding part of the above citation is not to be understood as authorizing a court of equity in any case to render a decree directly affecting land in another jurisdiction. The court further stated that the decree in such cases settles the rights of the parties before the court with respect to some contract, conveyance, trust or fraudulent conduct, and by attachment or other coercive means compels the offending party to comply with the requirements of the decree or simply declares the transaction complained of void and thereby removes the obstruction to the enforcement of his legal remedies.

In *Blackhurst v. James*, 304 Ill. 586, 136 N.E. 754, the appellants contended that the suit, insofar as it was sought to set aside deeds affecting land in counties outside the jurisdiction of the trial court, was improper and that the decree setting aside and canceling such deeds was a decree in rem, not in personam, and was therefore void. The court held that the decree setting aside the deeds was not void on the ground that the court did not have jurisdiction of the subject matter and that the requirement of the law that suits affecting land shall be brought in the county where it or some part of it is situated was not violated by the decree setting aside the deeds.

[7] In their amended joint claim the counterdefendants, Walter E. Kline, Stella P. Kline, R. E. Hayes, W. T. Frederking, and A. P. Wagemann, assert that the oil and gas interest claimed by the plaintiffs was obtained through fraud or mistake by the plaintiffs' predecessors in title and ask for reformation of the deeds to properly reflect the interest which was intended to be conveyed. Thus, it appears that the claim of these counterdefendants is based on fraud or mistake and that any dispute which exists as concerns property rights to land

located outside the territorial limits of the district is founded on such fraud or mistake.

In accordance with the above authority, it appears that Illinois law has established that such a cause of action so asserted is an action in personam and therefore transitory and may be brought whatever the parties may be found.

The Court finds that the cause here asserted may be brought in this district notwithstanding it may affect title to lands lying ouside of this district.

This Court has jurisdiction to entertain the cause here asserted.

APPENDIX "B"

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ILLINOIS ON THE MERITS

Stewart Oil Company, a corporation; Michigan Oil Company, a corporation, Stewart Producers, Inc., a corporation; Kenneth Patterson; G. F. Stewart; W. Rolland Stewart; Frank J. Tiernan; and Morris Yarbrove, Plaintiffs,

v

Sohio Petroleum Company, a corporation,
Defendant and Counterclaimant,

v

Walter E. Kline, Stella P. Kline, R. E. Hayes, Carl E. Moses, David R. Stewart, W. T. Frederking, A. P. Wagemann, John J. Steiner, Josephine M. Steiner, and Donk Bros. Coal and Coke Company, Counterdefendants.

Civ. A. No. 3821

United States District Court
E. D. Illinois

March 23, 1962

Jennings, District Judge.

This action was commenced by the plaintiffs to recover the proceeds from the sale of oil produced from the Southeast Quarter of the Southeast Quarter of Section 29, Township 6 North, Range 4 West of the Third Principal Meridian, Bond County, Illinois, and sold to Sohio Petroleum Company, defendant. After the action was instituted, the defendant paid the funds received from the sale of the oil into the Registry of this

Court, alleging that there were adverse claims to the proceeds and that the defendant-counterclaimant was in doubt as to the person or persons entitled to said proceeds and that it could not safely determine as between the adverse claims without hazard to itself and asked that this Court determine to whom the proceeds should be paid. The defendant-counterclaimant, Sohio Petroleum Company, does not claim any part of the proceeds.

On October 24, 1957, this Court entered an interlocutory decree which provided that the amended counterclaim was in the nature of a bill of interpleader, that it was aptly filed, and that the Court has jurisdiction over the parties and the subject matter. The Sohio Petroleum Company was allowed to deposit the sum of money in dispute in the Registry of the Court, subject to further order of the Court. The Sohio Petroleum Company was released and discharged from any and all liability for the proceeds of the oil produced from the property from the first purchase until the first day of September, 1957. Additional funds have subsequently been deposited in the Registry of the Court to abide the result of the trial.

The counterdefendants, John J. Steiner and Josephine M. Steiner, having failed to plead or appear, were judged and ordered defaulted.

The plaintiffs and the counterdefendants, Donk Bros. Coal & Coke Company, Carl E. Moses and David R. Stewart, claim that they are entitled to the proceeds by virtue of an oil and gas lease dated October 21, 1955, from Donk Bros. Coal & Coke Company, lessor, to Carl E. Moses and David R. Stewart, lessees, and subsequently assigned to the plaintiffs subject to a royalty of 1/8 interest in the original lease reserved to Donk Bros. Coal & Coke Company and an overriding

royalty of 1/16 of 7/8 reserved to Carl E. Moses and 1/32 of 7/8 reserved to David R. Stewart.

Doink Bros. Coal & Coke Company acquired its interest in the property from one Theodore Rassieur, who had in turn acquired title from Samuel J. Brown by warranty deed dated September 21, 1907, which provides in pertinent parts as follows:

> "The Grantor Samuel J. Brown, (unmarried), of Town of Old Ripley, in the County of Bond and State of Illinois, for and in consideration of Other good and valuable considerations, and the sum of One Dollars Convey and Warrant to Theodore Rassieur, of St. Louis, Missouri, the following described real estate to-wit: All coal and other mineral under the surface of the following described tracts of land:
>
> • • • • •
>
> "The Southeast quarter (¼) of the Southeast quarter (¼) of Section No. Twenty-nine (29), in Township No. Six (6), North; Range No. Four (4), West of the Third (3rd) Principal Meridian, 40 acres; containing in all 143.55 acres, more or less, in Townships Nos. 5 & 6, North, Range No. Four (4), West of the Third Principal Meridian, in the County of Bond and State of Illinois, together with the right to mine and remove said coal and other mineral and the right to conduct mining operations under the surface of said tracts of land therefor, and the right to use all rooms, entries and mining ways at coal depth under the surface of said tracts of land as and for mining ways, to and from beds of coal or other mineral in other lands, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.
>
> "Dated this 21st day of September, A. D. 1907.
>
> "/s/ Samuel J. Brown."

(Opinion of the U. S. District Court on the Merits)

The words "at coal depth" are added by interlineation to the printed deed.

The counterdefendants, Walter E. Kline, Stella P. Kline, R. E. Hayes, W. T. Frederking and A. P. Wagemann, claim the proceeds by virtue of mesne conveyances from Samuel J. Brown originating with a deed from Samuel J. Brown to Albert T. Brown dated the 21st day of September, 1907, which provides in pertinent parts as follows:

> "The Grantor, Samuel J. Brown, (unmarried), of the Town of Old Ripley, in the County of Bond and State of Illinois, for and in consideration of Other good and valuable considerations, and One Dollars in hand paid Convey And Warrant to Albert T. Brown, of the same place, in the County of Bond and State of Illinois, the following described Real Estate, to-wit:
>
> • • • • •
>
> "Also the Southeast quarter (¼) of the Southeast quarter (¼) of Section No. Twenty-nine (29), in Township No. Six (6) North; Range No. Four (4), West of the Third (3rd) Principal Meridian, 40 acres, more or less;
>
> "Containing in all 143.55 acres, more or less; (Coal etc. underlying said premises reserved, same having been heretofore sold); situated in the County of Bond, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State."
>
> "Dated this 21st day of September A.D. 1907.
>
> "/s/ Samuel J. Brown."

There is no dispute between the parties as to the title to the premises prior to Samuel J. Brown.

Donk Bros. Coal & Coke Company and those plaintiffs and counterdefendants claiming under it contend that the terms in

the deed from Samuel J. Brown to Donk Bros. Coal & Coke Company conveyed as a matter of law the oil and gas underlying said premises and that accordingly they are now entitled to the proceeds from the oil and gas which has been removed or which will be removed in the future.

The counterdefendants, Walter E. Kline, Stella P. Kline, R. E. Hayes, W. T. Fresterking and A. P. Wagemann (hereinafter referred to as "Kline et al."), contend that the deed from Samuel J. Brown to Theodore Rassieur does not convey the oil and gas as a matter of law. They further contend that it was the intention of the parties that only the coal and the right to mine the coal beneath the surface of the ground was meant to be conveyed. They further assert that the deed from Samuel J. Brown to Theodore Rassieur is ambiguous and should be construed in order to conform to the intention of the parties. In the alternative, they argue that in the event it is found that the deed is not ambiguous, it should be reformed to comply with the intention of the parties.

[1] The ghosts of the past that have long haunted the courts in the State of Illinois, when they were faced with the term "coal and other mineral," were laid to rest by the Illinois State Supreme Court in the case of *Nance v. Donk Bros. Coal & Coke Company*, 13 Ill. 2d 309, 151 N.E. 2d 97 (1958). In that case Mr. Justice House, together with Justice Klingbiel in a concurring opinion, had the following to say:

> "The complaint specifically prays for a construction of the deeds to exclude a conveyance of the oil and gas. However, the allegations thereof do state a cause of action for deed reformation and plaintiffs have alternatively prayed for that relief. For the reasons hereinafter given, the reformation remedy is available to plaintiffs but not construction of the deeds.

(Opinion of the U. S. District Court on the Merits)

"We have long followed the universally accepted doctrine that where the language used in a deed has a settled legal meaning, the intention of the parties must be gathered from the instrument itself and extrinsic evidence is not admissible to aid in its construction. (Cases cited).

"In a series of Illinois decisions in the early 1940's, it was held, as in the majority of other jurisdictions, that a conveyance of 'a'll coal and other mineral' has a settled legal meaning and does include oil and gas, with incidental exploration, development and production rights. (Cases cited)."

Justice Bristow, together with Justice Daily in a special concurring opinion, had the following to say:

"Counts 1, 2, and 5 of the complaint also pray for relief by way of construction of the deeds in the light of extraneous matter alleged. I do not believe that this court intends to hold that relief by way of deed construction is available in this case, and concurrence in the end result should in no wise be construed as an abandonment of certain fundamental principles of the substantive law of Illinois.

"These principles and decisions have established that where the language of a deed has a settled legal meaning the instrument itself is the only criterion of the intention of the parties and extrinsic evidence is not admissible to aid in its construction; (Cases cited) that a conveyance of 'all coal and other mineral' has a settled legal meaning and does include oil and gas, with incidental exploration, development and production rights (Cases cited); that the enumeration of other and incidental mining rights in the habendum clause of a conveyance of "all coal and other mineral" does not derogate from, but enlarges the express and implied rights included in the granting clause. (Cases cited.)"

Thus it would appear that the contention of Kline, et al. that "coal and other mineral" does not convey oil and gas as

a matter of law is diametrically opposed to the established law of the State of Illinois and accordingly avails them nothing.

The contention of Kline et al. that the deed is ambiguous is based on the fact that the words "at coal depth" are interlined into the printed portion of the deed and thus create ambiguity in the meaning intended to be placed in the deed by the parties. These words are interlined in the habendum clause in the deed and appear in that portion of the deed pertaining to the right to use rooms, entries and mining ways under the surface of the tracts. The interlineation of these words does not create an ambiguity in the granting clause.

That the plaintiffs are not entitled to have this deed construed is amply established by Illinois law as stated by the Justices of the Illinois Supreme Court in the excerpts from the opinion hereinabove set out.

Thus it would appear that the only avenue of relief available to the counter-defendants, Kline et al., is through the principles of reformation.

A reformation action rests upon a theory that the parties had reached an understanding between themselves; but in reducing it to writing, through mutual mistake or through mistake on one side and fraud on the other, some provision which had been agreed upon was omitted; and the action is to so change the instrument as written to conform it to the contract agreed upon by inserting the provision omitted or by striking one inserted by mutual mistake. A court of chancery may reform an instrument so as to make it conform to the intention of the parties and the agreement between them.

Counter-defendants, Kline et al., assert that local custom and understanding of the words "coal and other minerals" at

the time of the execution of the deed between Samuel Brown and Theodore Rassieur was not deemed to include oil and gas underlying the premises.

These counterdefendants have introduced in evidence a great number of deeds pertaining to the conveyance of coal in Bond County, Illinois, from various landowners. The deeds involved generally contain the printed statement "all coal and other mineral under the surface of the following described tracts of land." In some deeds the words "and other mineral" have been stricken. In other instances the words "all coal and other mineral" remain unchanged. Other deeds contain the words "except oil, gas and other precious metals." Still other deeds contain the words "except oil and gas."

These counterdefendants also introduced a quit claim deed from Theodore Rassieur and Carrie M. Rassieur, his wife, to Donk Bros. Coal & Coke Company, which purports to convey the lands and interests in lands acquired by Theodore Rassieur in Bond County, Illinois. By this deed Theodore Rassieur and his wife purport to convey to Donk Bros. Coal & Coke Company the interest in the land they had acquired in Bond County. It is interesting to note that the interests in the lands conveyed are separated so that only the interests which were acquired by Rassieur and his wife were conveyed to Donk Bros. Coal & Coke Company. This deed contains 87 separate entries of parcels of land. In this deed parcels Nos. 1 through 54, inclusive, are preceded by the words "all coal and other mineral under the surface of the following described tracts of land"; entries Nos. 55 through 68, inclusive, are preceded by the statement "also all coal under the surface of the following described tracts of land"; entries Nos. 69 and 70 are prefaced by the statement "also all coal and other mineral, except oil, gas and other precious metals, under the surface of the following de-

scribed tracts of land." Nos. 71 through 78, inclusive, are prefaced by the statement "also all coal and other mineral except oil and gas under the surface of the following described tracts of land." Entries Nos. 79 through 87, inclusive, are preceded by the statement "also all coal below the depth of one hundred and twenty-five feet under the surface of the following described tracts of land."

Mr. William Ganzer, called by Kline et al., testified he had been instrumental in obtaining a number of options in the area during the years preceding and subsequent to the conveyance of the deed here in dispute. He stated that in pursuing his task of obtaining options it was his intention to obtain options for coal only; that he did not intend to option the lands for anything other than coal underlying same and the right to mine the coal. He testified on cross examination that he was not present at the time the deed was executed by Samuel J. Brown conveying the coal and other mineral to Rassieur and he had no idea as to the conversation which took place or whether any matters concerning the mineral to be obtained by virtue of the lease was discussed by the parties.

[4] The Court has examined the evidence relevant to the allegations of the counterdefendants, Kline et al., that there was a general understanding in the community concerning the conveyance of coal and other mineral and their allegation that such understanding was that it did not convey oil and gas, and finds that the evidence is insufficient to establish such an understanding in the community. As evidenced by the number of changes in the deeds conveying coal and other mineral in the area, it appears that when the parties intended to limit the interest to be conveyed, additional words were inserted in the deed to exclude those minerals not intended to be conveyed or the words "and other minerals" were stricken. The

Court finds that there was no understanding in the community where the property in dispute is located, at the time of the execution of the deeds from Samuel J. Brown by which the coal and other mineral were conveyed, to the effect that the words "coal and other mineral" had anything other than their usual legal meaning.

[5] As additional evidence that it was not the intention of the parties that oil and gas be conveyed by the term "coal and other mineral," the counterdefendants, Kline et al., attempted to introduce their Exhibit 17 (which will hereafter be referred to as Exhibit K-17) under the ancient document rule. The offered document is a photostatic copy of a notice of acceptance of coal rights under option as it was recorded in the office of the Clerk of the Circuit Court and Ex-Officio Recorder for Bond County, Illinois, which purported to give notice of acceptance of Nancy A. Brown, who was a sister to Samuel J. Brown and resided in the home of Samuel J. Brown.

The document in question was said to be on a form of substantially the same type as other Notice of Acceptance of Coal Rights Under Option forms, the originals of which were introduced in evidence, except that at the bottom of the notice and between the date and signature there appears the following:

> "In response to your inquiry regarding the phrase 'other minerals' it is my intention to buy only the coal and such other minerals as may be mined with the coal at coal depth."

The document is signed "Theodore Rassieur by C. C. Terry His Agent and Attorney." The document is dated the 4th day of June A.D. 1907 and was not recorded until the 17th day of November A.D. 1947 — more than 40 years after it was executed.

(Opinion of the U. S. District Court on the Merits)

At the trial the plaintiffs and some counterdefendants asked to examine the original document and were informed that it was not available for examination, that it had been lost subsequent to having been recorded. Subsequent to the trial, the counterdefendants, Dork Bros. Coal & Coke Company, examined the document, recorded in Bond County, Illinois, and upon comparing it with other notices of acceptance of coal rights under option found that this particular document contained a great number of variances between it and other documents of similar nature. Upon making this discovery, a motion to submit additional evidence was promptly made to the Court in order to clarify any questions concerning the document's authenticity. A hearing was granted. During the course of this second hearing it developed that one Alva Nance had presented a document similar to the one which is here in dispute to the Circuit Clerk and Ex-Officio Recorder of Bond County, Illinois and asked that it be recorded.

Alva Nance testified at the first hearing that he had presented the document to the Recorder and that it was recorded; that it had subsequently been returned to him and had been lost. At the second hearing Alva Nance testified he had taken the document to the Recorder's office for recording; that the Recorder stated he was unable to read it and asked him if he could decipher parts of the document for him; that he then took the document to his office and typed out what he believed to be the exact wording of the document; that he then returned the original document together with his typewritten facsimile to the Recorder's office and that it was recorded.

The typist who was employed in the Recorder's office for the purpose of typing the various documents into the official records in the Recorder's office of Bond County testified that she had in fact recorded the document in almost exactly the

same manner in which it was given to her. She stated she did not remember having seen two documents, that she did not recall having seen the original document but merely was presented with the document which had been typed by Alva Nance, and that she had typed it into the record exactly as it was given to her.

The comparison of the document which was recorded with other documents of the same nature which were executed in or about the year 1907 discloses that the recorded Notice of Acceptance of Coal Rights Under Option in dispute is substantially different in a number of details from the other documents of similar import which were executed about the same time. There is no adequate showing that the purported ancient document was in fact recorded, nor was this document available for inspection by the Court.

If this Court were to admit the Notice of Acceptance of Coal Rights Under Option (Exhibit K-17) under the ancient document rule, it would in effect be stretching that theory out of all proportion. Such action would open the door for anyone in the future to present fraudulent and spurious documents into evidence. Exhibit No. K-17 will not be admitted into evidence and will not be considered as evidence in this case, since in the opinion of the Court it smacks of fraud.

Examining the entire evidence, it is not possible to say that there has been any substantial evidence which would justify this Court in reforming the deed between Samuel J. Brown and Theodore Rassieur so as to insert a meaning other than its established legal meaning. The evidence presented completely fails to show that the intentions of the parties were any other than to convey the coal and other mineral as is stated in the deed and, accordingly, reformation will be denied.

(Opinion of the U. S. District Court on the Merits)

The counterdefendants, Carl E. Moses, David R. Stewart, and Donk Bros. Coal & Coke Company, and the plaintiffs, as an additional argument in support of their claim, assert that the counterdefendants, Kline et al., and their predecessors in title, are guilty of laches. This defense may have some merit; however, the Court will not consider the allegations of laches since the facts set out hereinabove are determinative of the issues involved."

The Court finds that judgment should be entered for the plaintiffs, Stewart Oil Company, a corporation; Michigan Oil Company, a corporation; Stewart Producers, Inc., a corporation; Kenneth Patterson; G. F. Stewart; W. Rolland Stewart; Frank J. Tiernan; and Morris Yarbrove; and for the counterdefendants, Carl E. Moses, David R. Stewart, and Donk Bros. Coal & Coke Company, as their several interests appear, and against the counterdefendants, Walter E. Kline, Stella P. Kline, R. E. Hayes, W. T. Frederking, A. P. Wagemann, John J. Steiner, and Josephine M. Steiner.

The above and foregoing shall be considered findings of fact and conclusions of law.

Parties to settle the order.

APPENDIX "C"

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

In The

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

No. 13842 September Term, 1962 January Session, 1963

Stewart Oil Company, a Corporation; Michigan Oil Company, a Corporation; Stewart Producers, Inc., a Corporation; Kenneth Patterson; G. F. Stewart; W. Rolland Stewart; Frank J. Tiernan & Morris Yarbrove, Plaintiffs-Appellees,

vs.

Sohio Petroleum Company, Defendant and Counter Claimant,

vs.

Walter E. Kline; Stella P. Kline; R. E. Hayes; W. T. Frederking and A. P. Wagemann, Counter Defendants-Appellants,

and

Carl E. Moses; David R. Stewart and Donk Bros. Coal & Coke Company, Counter Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Illinois

April 10, 1963

(Opinion of the U. S. Court of Appeals)

Before DUFFY, SWYGERT and MAJOR, *Circuit Judges*.

SWYGERT, *Circuit Judge*. Plaintiffs-appellees, all citizens of Michigan, brought suit against the Sohio Petroleum Company, an Ohio corporation, to recover their share of the proceeds from the sale of oil produced, saved and marketed to Sohio by plaintiffs together with counterdefendants, Carl E. Moses and David R. Stewart. The Michigan plaintiffs are assignees of counterdefendants-appellees, Carl E. Moses and David R. Stewart, citizens of Illinois, whose title rests on a lease of the oil interests from counterdefendant, Donk Bros. Coal & Coke Company, an Illinois corporation, which retained a one-eighth royalty interest. It is admitted that Carl E. Moses and David R. Stewart reserved certain overriding royalty interests in the oil and gas lease which they assigned to the Michigan plaintiffs.

Sohio answered the complaint and counterclaimed, alleging possession but not legal ownership of the money (oil proceeds), and sought adjudication of conflicting claimants' rights to the money.[1]

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[1] The amended counterclaim reads in part:

"3. That there appears of record two oil and gas leases from the adverse claimants mentioned above, one dated October 30, 1953 filed November 19, 1955, in Book 44, page 392, from Walter E. Kline and Stella P. Kline, his wife, to W. T. Frederking and A. B. Wagemann, and the other dated September 21, 1956, filed September 24, 1956, in Book 47, page 37, from R. E. Hayes and wife, Lillian Mae Hayes, to W. T. Frederking; that in addition there appears of record a deed from John M. Steiner and Josephine M. Steiner to themselves as joint tenants, executed in the year 1954, although the records reveal that these parties previously had conveyed the land in 1942; that in assignments from Carl E.

The District Court's memorandum opinion, on a motion to dismiss, is reported at 185 F. Supp. 765; and the final opinion, disposing of the case on the merits, is reported at 202 F. Supp. 952. This appeal is taken by counter-defendants-appellants from the decision rendered against them on the merits. They question jurisdiction of the District Court over the subject matter, the existence of diversity of citizenship of the parties necessary to support jurisdiction, as well as legal conclusions, findings of fact, and evidentiary rulings of the trial judge.

As to all but the jurisdictional question of the diversity of citizenship requirements of what turned out to be an interpleader action, we are satisfied that the opinions of

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Moses and David R. Stewart, lessees of Donk Bros. Coal and Coke Company, 1/16 of 7/8 overriding royalty interest was reserved by Carl E. Moses and 1/32 of 7/8 overriding royalty interest was reserved by David R. Stewart.

* * * * *

"7. That this counterclaimant is under no liability of any kind to the claimants or any of them, except such liability as results from the purchase of oil from the above premises, and which will be purchased from time to time in the future, and it does not know, nor can it ascertain to whom the proceeds should be paid on account of the adverse claims that have been asserted thereto, and cannot without hazard undertake to decide the validity of the respective claims and is willing [sic] to take the risk of so deciding.

"8. That in justice and in equity, the counterclaimant should not be compelled to become involved in a dispute of said claimants, but such claimants should be required to litigate and settle their dispute between themselves without in any manner involving this counterclaimant, and counterclaimant says that it has been informed that further suits will be brought by said rival claimants for the same monies."

the District Court fully and completely delineate the issues and correctly decide them. Although all parties at one stage of the proceedings stipulated as to the jurisdiction of the District Court, appellants later raised the question anew and now reassert it on appeal. We feel it incumbent on us to discuss their contention in this regard with more particularity than the summary treatment accorded it by the District Court.

Although we believe jurisdiction in the interpleader action can be upheld on the basis of ancillary jurisdiction arising out of the filing of the original suit by the Michigan plaintiffs against an Ohio corporation, and waiver of venue by the parties, we need not rest our decision on that basis.

We believe that Sohio's interest was more than that of mere stakeholder. In its amended counterclaim, Sohio asked:

> "3: That the Court adjudge whether the plaintiffs, Donk Bros. Coal and Coke Company, Carl E. Moses and David R. Stewart, on the one hand, or R. E. Hayes, Walter E. Kline, Stella P. Kline, W. T. Frederking, A. B. Wagemann, John J. Steiner and Josephine M. Steiner, or any of them, on the other hand, are entitled to the money withheld *and also money that will be accumulated in the future by reason of purchase of oil from said property.*" (Emphasis supplied.)

Determination of the issues in the suit have legal significance for Sohio beyond the proper distribution of money deposited in court. Protection from multiple suits, potential liability as a tortfeasor in having purchased oil from sources having no title to it, and the validity of its purchase

agreements with one of the groups of adverse claimants, all militate against the treatment of Sohio as a nominal stakeholder. Necessarily, it was interested vitally in the identity of future recipients of royalties and in the ownership of the oil. This *interest* of Sohio is sufficient to give it standing under Rule 22, Fed. R. Civ. P., as a proper plaintiff, and the fact that the District Court granted Sohio's request for discharge, does not affect our conclusion. Under Rule 22 interpleader, diversity of citizenship between an interested stakeholder-plaintiff and all adverse claimants is all that is required. No claim is made that any of the adverse claimants are citizens of Ohio; thus, complete diversity existed under Rule 22 on which to base jurisdiction of the District Court.

In the alternative, under statutory interpleader, 28 U. S. C. § 1335, where the stakeholder is totally without interest and is only a nominal party, there is authority that it is sufficient if two adverse claimants with genuinely adverse interests are citizens of different states. *Haynes* v. *Felder*, 239 F. 2d 868 (5th Cir. 1957). On this basis diversity of citizenship exists since appellants, citizens of Illinois, have interests adverse to the original plaintiffs, all citizens of Michigan. The fact that three citizens of Illinois retained interests in the lease assigned to the Michigan plaintiffs, separate legal entities, does not make their interests identical with those of the Michigan plaintiffs since, as stated in *Guth* v. *Texas Co.*, 155 F. 2d 563, 566 (7th Cir. 1946):

> "The obligation to pay the lessors their royalties in proportion to their respective interests in the gas, gasoline, and petroleum distillates produced and in possession of the defendant was a *several* obligation

and the plaintiff could sue separately for his proportion of the royalty." (Emphasis supplied.)

Therefore, even the doctrine of realignment of the parties, as enunciated by the United States Supreme Court in *Indianapolis v. Chase National Bank*, 314 U.S. 63 (1941), would not destroy the fact that there are two adverse groups of claimants—one group citizens of Michigan, and the other group citizens of Illinois.

Under either view we believe the District Court correctly determined that it had jurisdiction.

All other substantial questions raised on appeal were answered correctly in the District Court's opinions, cited above, and we adopt the opinions as our own. We have considered the questioned evidentiary rulings and find the objections to be without merit.

The judgment is AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX "D"

JUDGMENT OR DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago 10, Illinois

Wednesday, April 10, 1963

Before

Hon. F. Ryan Duffy, Circuit Judge
Hon. Luther M. Swygert, Circuit Judge
Hon. J. Earl Major, Circuit Judge

No. 13842

Stewart Oil Company, et al.,
Plaintiffs-Appellees,
vs.
Walter E. Kline, et al.,
Counter Defendants-Appellants,
and
Carl E. Moses, et al.,
Counter Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Illinois

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX "E"

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Art. III, Sec. 2, in pertinent part:

"Section 2. The judicial Power shall extend, * * * to Controversies * * * between Citizens of different States * * *"

STATUTES INVOLVED

28 U.S.C.A., Sec. 1332, in pertinent part:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3,000 exclusive of interest and costs, and is between: (1) Citizens of different states;"

28 U.S.C.A., Sec. 1335, in pertinent part:

"(a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or prop-

erty of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if (1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court * * *"

28 U.S.C.A., Sec. 1359, provides:

"A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court."

28 U.S.C.A., Sec. 1392, provides:

"(a) Any civil action not of a local nature against defendants residing in different districts in the same state, may be brought in any of such districts.

(b) Any civil action of a local nature, involving property located in different districts in the same state, may be brought in any of such districts."

28 U.S.C.A., Sec. 1655, provides in pertinent part:

"In an action in a district court to enforce any lien upon or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the district, where any defendant cannot

be served within the state, or does not voluntarily appear, the Court may order the absent defendant to appear or plead by a day certain * * * When a part of the property is within another district, but within the same state, such action may be brought in either district."

Illinois Revised Statutes, Chapter 110, Sec. 7, provides in pertinent part:

"7. Venue—Public Corporations—Local Actions—Libel—Insurance Companies.

§7 (1) * * *

(2) Any action to quiet title to real estate, or to partition or recover possession thereof, or to foreclose a mortgage or other lien thereon, must be brought in the county in which the real estate or some part of it is situated."